

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE  
MN681/2010

UD730/2010

against  
EMPLOYER  
under

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin  
Members: Mr. P. Casey  
Ms. P. Doyle

heard this claim at Cork on 24th May 2011

Representation:

Claimant:

Mr. Matthew Nagle, Matthew J Nagle & Co, Solicitors,  
Broadview House, West End, Mallow, Co Cork

Respondent:

Frank Nyhan & Associates, Solicitors,  
11 Market Square, (Opposite Courthouse), Mallow, Co. Cork

#### **Respondent's case**

The dismissal arose due to the claimant sending inappropriate and derogatory e-mails to her friend and work colleague during working hours using the respondent's computer. A number of her work colleagues were the subject of these e-mails and although they were not sent to these other colleagues, they were shown to one of them by a supervisor who had seen them while using the claimant's computer. This supervisor then brought the e-mails to the attention of the H.R. Director (hereinafter referred to as HR) and HR then undertook to carry out an investigation. During this investigation HR showed the e-mails to the employees referred to therein and they were very upset by the content. One of these employees indicated that she may consult a solicitor and also sought counselling in relation to the matter.

No formal complaint was made by any of the employees involved but HR decided that the incident merited disciplinary action and having completed the investigation took the decision to dismiss the claimant. HR did not explore the possibility of resolving the matter by having the claimant apologise to her colleagues but did state to the Tribunal that the claimant had refused to apologise.

HR decided not to issue the claimant with a warning because he considered the matter to be gross misconduct and so serious as to merit dismissal and felt that he had also to protect the company.

The claimant was afforded an opportunity to appeal. An appeal was lodged and heard by a director of the respondent (hereinafter referred to as JB) and the decision to dismiss was upheld.

### **Claimant's case**

The claimant confirmed that she had sent the e-mails in question to her friend but never intended that they be seen by other people and stated that she would never say such things to their faces. She was very upset when told that these e-mails had been shown to her colleagues referred to therein.

Having read the document, provided to her by the respondent, entitled Pathway To Progress the claimant asked HR if she was to be suspended and was allegedly told that he was waiting for approval from JB. HR denied that he had said this and stated to the Tribunal that he had taken the decision to suspend and subsequently dismiss the claimant. The claimant also asked HR to consider allowing her to return to work on a final written warning and gave him an undertaking that this sort of thing would never happen again. Initially, she had refused to apologise to a particular colleague in view of the fact that this person was considering legal action but subsequently did offer to make such an apology.

The claimant contested that HR had effectively been the complainant, investigator and decision maker in her dismissal and therefore there had been an unfair procedure. She also held that the decision to dismiss her was disproportionate and harsh and that she was unfairly dismissed.

### **Determination**

Having considered the evidence adduced the Tribunal finds that the procedures adopted by the respondent, in dismissing the claimant, were deficient and accordingly determines that the claimant was unfairly dismissed. However, in considering the contribution by the claimant to her dismissal, the Tribunal awards her €10,000.00 under the Unfair Dismissals Acts, 1977 to 2007, this being a fair and equitable award in all the circumstances.

The Tribunal also awards the claimant €921.16 under the Minimum Notice And Terms Of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

